The Commonwealth of Massachusetts

DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

D.T.E. 01-106-B

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, § 105 and G.L. c. 164, § 76 to increase the participation rate for discounted electric, gas and telephone service.

ORDER ON MOTION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT COMPANY AND COMMONWEALTH ELECTRIC COMPANY, D/B/A NSTAR ELECTRIC AND NSTAR GAS COMPANY FOR RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION

I. INTRODUCTION AND PROCEDURAL HISTORY

On August 8, 2003, the Department of Telecommunications and Energy ("Department") issued an Order establishing a computer-matching program for electric distribution companies and local gas distribution companies to facilitate the enrollment of eligible customers in utility discount rate programs. Investigation re: Discount Program Participation Rate, D.T.E. 01-106-A (2003). The Department directed electric and gas companies to electronically transfer customer account information on a quarterly basis to the Executive Office of Health and Human Services ("EOHHS"). Subsequently, EOHHS will match this account information with information in its database of recipients of means tested public benefit programs in order to identify customers who are eligible for discount rate programs. D.T.E. 01-106-A at 12. The Department further directed the electric and gas companies to presumptively enroll all eligible customers in applicable discount rate programs, with subsequent notice to customers of their right to unenroll. Id. Finally, the Department stated that issues related to cost recovery would be addressed in a separate proceeding. Id. at 13.

On August 28, 2003, Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company (collectively, "NSTAR") filed a motion to reconsider or, in the alternative, to clarify certain issues related to the timing of the implementation of the computer-matching program established by the Department's Order ("Motion"). On September 12, 2003, Bay State Gas

Company ("Bay State"), Blackstone Gas Company ("Blackstone"), KeySpan Energy Delivery New England ("KeySpan"), the Massachusetts Community Action Program Director's Association and the Massachusetts Energy Director's Association (together,"MASSCAP"), New England Gas Company ("New England"), and Western Massachusetts Electric Company ("WMECo") filed responses to the Motion.

II. MOTION FOR RECONSIDERATION/CLARIFICATION

A. Positions of the Commenters

1. NSTAR

NSTAR seeks reconsideration of the Department's directive to implement the computer-matching program without first: (1) investigating the costs and bill impacts for customers who will subsidize the discount rates including the establishment of a cost recovery mechanism; and (2) finalizing certain logistical details of the program[1] (Motion at 1). In the alternative, NSTAR requests that the Department clarify that electric and gas companies need not implement the directives in the Order until the above-referenced issues have been resolved (id. at 2).

First, because the program is likely to result in an increase in discount rate participation, NSTAR argues that the Department should either reconsider or clarify its Order and delay implementation of the computer-matching program until an evidentiary record is

[1] Specifically, NSTAR contends that, until EOHHS has received proper authorization from its clients to share information with the electric and gas companies, it should not be required to begin (1) sharing data with EOHHS pursuant to the computer-matching program, and (2) notifying customers of the ability to opt-out of having their information shared with EOHHS (Motion at 4-7).

developed on the expense, revenue, and bill impacts for residential customers (id. at 4, 8). In addition, NSTAR argues that the Department should delay implementation of the computer-matching program until all issues related to cost recovery are resolved in order to avoid having electric and gas companies incur costs that may not be recoverable (id. at 5). To the extent that electric and gas companies incur costs prior to approval of a recovery mechanism, NSTAR argues that the companies will be assuming a risk that the Department will deny the recovery of some or all of those costs (id. at 9).

Second, NSTAR requests that the Department reconsider or clarify its Order and delay implementation of the computer-matching program until EOHHS has revised the applications for income-eligible governmental programs under its jurisdiction[2] and has received permission from its clients to disclose information to electric and gas companies (id. at 5-7). Finally, to avoid an inefficient use of resources, NSTAR requests that the Department clarify that electric and gas companies need not begin notifying customers of the opportunity to opt-out of sharing their data with EOHHS until EOHHS has received permission to share client information (id. at 7).

2. MASSCAP

MASSCAP opposes NSTAR's request for reconsideration to the extent that it seeks to postpone implementation of the computer-matching program until resolution of a cost recovery mechanism (MASSCAP Response at 1-2). MASSCAP does not oppose clarification of the

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[2] These include the Department of Transitional Assistance ("DTA") and the Division of Medical Assistance ("DMA") programs.

timetable for the logistical steps that electric and gas companies must take to implement the program (id. at 2).

With respect to NSTAR's request for reconsideration, MASSCAP argues that NSTAR has not met the Department's standard of review (id. at 3). Specifically, MASSCAP argues that NSTAR has not specified any "extraordinary circumstances" nor has it brought to light any "previously unknown or undisclosed facts" that would warrant reconsideration (id. at 4).

Even if the Department were to reconsider its Order, MASSCAP argues that NSTAR's request should be denied as unfounded in law (id.). MASSCAP maintains that NSTAR has provided no legal authority for the proposition that the Department cannot implement an order that may have a cost impact in the future unless it first quantifies the costs and develops a cost-recovery mechanism (id.). Instead, MASSCAP argues that the Department may adopt policies that apply to all electric and gas companies that will impose costs, without first establishing a cost recovery mechanism (id. at 5, citing Cambridge Electric Light Company v. D.P.U., 363 Mass 474, 487 (1973)). As support, MASSCAP cites several instances where the Department has issued orders that may impose costs without first adopting cost recovery mechanisms (id. at 5, citing Service Quality Standards, D.T.E. 99-84 (2000); Response of Western Massachusetts Electric Company to the Storm of July 15, 1995, D.P.U. 95-96 (1995)).

3. Electric and Gas Companies

Bay State supports NSTAR's Motion and requests that the Department clarify that all costs resulting from the implementation of the computer-matching program, including bill impacts and lost revenues resulting from an increase in participation in the discount program, may be deferred for later recovery (Bay State Response at 3, 4). Blackstone also supports NSTAR's Motion and argues that the failure to create a proper cost recovery mechanism will have a significant adverse effect on Blackstone (Blackstone Response at 1-2).

Like NSTAR, Keyspan argues that the Department should not implement the computer-matching program until it has investigated the cost to utilities and established a cost-recovery method (KeySpan Response at 2). New England supports NSTAR's Motion and maintains that, due to its small size, it is particularly sensitive to potential increased costs resulting from the Department's directives (New England Response at 1). WMECo supports NSTAR's Motion in full (WMECo Response at 1). Finally, the electric and gas companies support NSTAR's request to clarify the timeline of logistical steps for program implementation (Bay State Response at 4-5; Blackstone Response at 1; Keyspan Response at 2; New England Response at 2; WMECo Response at 1).

III. STANDARD OF REVIEW

The Department's procedural rule, 220 C.M.R. § 1.11(10), authorizes a party to file a motion for reconsideration within 20 days of service of a final Department order. The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would warrant a material change to a decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is sufficiently ambiguous to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), citing Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

IV. ANALYSIS AND FINDINGS

In D.T.E. 01-106-A at 13, the Department directed the electric and gas companies to "electronically transfer residential customer account information on a quarterly basis" to EOHHS for the purpose of enrolling eligible customers in discount rates. However, NSTAR contends that the Order does not state specifically when the companies must begin transferring such information (Motion at 4-5). As a result, NSTAR seeks reconsideration or clarification of the Department's Order, arguing that, prior to implementing the computer-matching program, the Department must (1) investigate the costs and bill impacts for customers who will subsidize the discount rates including the establishment of a cost recovery mechanism and (2) finalize certain logistical details (Motion at 1).

The Department has reviewed NSTAR's Motion and finds that it fails to demonstrate any mistake or inadvertence by the Department; nor does NSTAR set forth any previously unknown or undisclosed facts that would warrant a material change in the Order. Moreover, the Department finds that NSTAR has failed to demonstrate extraordinary circumstances that would require substantively modifying the Order. Specifically, with respect to cost recovery issues, the Department stated that we would address these issues subsequent to our approval of the program. See D.T.E. 01-106-A at 13. The establishment of a cost recovery mechanism is not, as NSTAR suggests, a condition precedent to the implementation of the computer-matching program (Motion at 3; see Cambridge Electric Light Co. v. D.P.U., 363 Mass. 474, 498-499 (1973)).[3] In addition, as discussed below, all logistical prerequisites to the establishment of the computer-matching program have now been met. Therefore, NSTAR's Motion for reconsideration is denied.

Notwithstanding the foregoing, however, we find that the Order does contain language regarding the timing of the implementation of the computer-matching program that is sufficiently ambiguous to leave doubt as to its meaning. Therefore, clarification is warranted.

With respect to NSTAR's request to clarify the cost recovery mechanism, by statute, the costs of the low-income discount must be included in the rates charged to all distribution company customers. G.L. c. 164, § 1F(4)(i). Currently, any lost revenues from the low-income discount program are recovered from all customers through base rates. Boston Gas Company, D.T.E. 03-40, at 385 (2003); The Berkshire Gas Company, D.T.E. 01-56, at 131-134 (2002). We have recognized that distribution companies may incur a decrease in revenues from increased participation in discount rates once the computer-matching program

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3 In matters where discretion may properly be exercised, the Department has established policies that may impose costs without first adopting a cost-recovery mechanism. For example, in Service Quality Standards, D.T.E. 99-84 (2000), the Department required all electric and gas companies to meet new standards for customer service, safety, and reliability and imposed related data collection and reporting obligations. See also Western Massachusetts Electric Company to the Storm of July 15, 1995, D.P.U. 95-96 (1995); Kings Grant Water Company, D.P.U. 87-228, at 32 (1988); Boston Edison Company, D.P.U. 86-91, at 9 (1986); Boston Edison Company, D.P.U. 86-71, at 15-16 (1986).

begins. D.T.E. 01-106-A at 13. Customarily, this new revenue shortfall might be addressed in the context of a future rate proceeding. But the need to effect both the subsidy and the revenue-recovery purposes of G.L. c. 164, § 1F(4)(i) counsel a different approach. With the onset of the winter heating season, at a time when fuel prices are particularly high, the Department must take all appropriate steps to bring the benefits of available utility discount programs to all eligible customers. D.T.E. 01-106, at 6; D.T.E. 01-106-A at 12. To ensure that G.L. c. 164, § 1F(4)(i) is satisfied, we determine that it is reasonable in this instance to modify our method of recovering the low-income discount.

On October 9, 2003, the Department held a technical conference to receive comments on cost recovery mechanisms. Based on the comments received, we find that it is appropriate to establish a reconciliation mechanism to recover any resulting revenue shortfall. Therefore, until a company's next rate case, the electric and gas companies may recover revenues lost as a result of the low-income subsidy in their next reconciliation filing for electric companies or local distribution adjustment factor filing for gas companies. This result is consistent with the legislative intent expressed in G.L. c. 164, § 1F(4)(i). When calculating lost revenues associated with the low-income subsidy, the companies should propose a reconciliation factor based on the difference between the total forecasted lost revenues associated with the low-income discount and the amount of the low-income subsidy that was approved in the company's last rate case or settlement, adjusted for any changes in sales and the number of low-income customers as of the effective date of the computer-matching program.[4]

With respect to NSTAR's request to clarify the logistical details, the Department recognized that it would take approximately one year from the date the agencies under EOHHS' jurisdiction began using applications with language authorizing the release of eligibility information for utilities to implement the computer-matching program. D.T.E. 01-106-A at 10. The Department did not intend that electric and gas companies begin sharing data with EOHHS pursuant to the computer-matching program and notifying customers of the ability to opt-out of having their information shared with EOHHS until EOHHS received authorization from its clients to share such information. In fact, during this interim, we directed electric and gas companies to continue using their current discount rate enrollment procedures. Id.

On September 15, 2003, DTA implemented the change on its application to include a privacy waiver that gives the agency authorization to release customer eligibility information (Tr. at 44). One year has passed and EOHHS is now authorized to share DTA client information with electric and gas companies. See D.T.E. 01-106-A at 10. Therefore, the Department directs the electric and gas companies to commence sharing data with EOHHS within 30 days of the date of this Order. In addition, the electric and gas companies shall

[4] In each company's next rate case, the Department will consider whether to establish a fully-reconciling mechanism to collect the entire revenue shortfall from discount rates or whether it is more appropriate to resume collecting this shortfall from all customers through base rates.

notify customers of the ability to opt-out of having information shared with EOHHS in December 2004 bill inserts.[5]

Finally, pursuant to G.L. c. 164, § 1F(4)(i), each distribution company is required to conduct "substantial outreach efforts" to make the low-income discount program available to eligible customers. As part of these outreach efforts, we direct the electric and gas companies to meet quarterly to evaluate the success and resolve any potential problems with the computer-matching program, evaluate best practices, and work to increase the number of public benefit programs included in the computer-matching program.[6]

IV. ORDER

Accordingly, after due consideration it is:

ORDERED: That Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company, d/b/a NSTAR Electric and NSTAR Gas Company's Motion for Reconsideration (in Part), or in the Alternative, Motion for Clarification is DENIED, in part, and GRANTED, in part in accordance with this Order; and it is

FURTHER ORDERED: That all electric distribution companies and local gas distribution companies begin the exchange of customer information with EOHHS for the sole

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5 We recognize that the implementation of the computer-matching program within 30 days of the date of this Order combined with an opt-out notice in December 2004 bills will mean that certain customers on later bill cycles will not have an opportunity to opt-out of the first round of data sharing with EOHHS. Although this timing is unfortunate, it is necessary in order to ensure that the computer-matching program is available to assist all low-income customers this winter heating season.

6 For example, public benefit programs include Women Infants and Children, Medicaid, and Free/Reduced Lunch Programs.

purpose of enrolling eligible customers in discount programs within 30 days of the date of this Order; and it is

FURTHER ORDERED: That all electric distribution companies and local gas distribution companies include opt-out notices in December 2004 bill inserts; and it is

FURTHER ORDERED: That all electric distribution companies and local gas distribution companies comply with all other directives contained in this Order.

By Order of the Department,

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Paul G. Afonso, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

COMMISSIONER MANNING, concurring in part and dissenting in part:

I agree with the majority that the implementation of automated enrollment for low-income utility discount rates is appropriate. Implementation of the computer-matching program will make enrolling in the discount program more efficient and effective. I also agree with the majority's finding that the establishment of a cost recovery mechanism is not a prerequisite to the establishment of the computer-matching program. I disagree, however, with the majority's order implementing a cost recovery mechanism without first assessing the impact of the program on company revenues, vetting proposals and allowing comment by the parties. This program is a scaled-down version of the one originally proposed and, therefore, may not result in a dramatic increase in the numbers enrolled in the discount program and associated costs. In addition, the automated program should result in administrative savings. An approach that better serves the interests of ratepayers would have involved ordering companies to file reports after six months indicating numbers enrolled pre- and post-implementation and then soliciting proposals for cost recovery, if warranted.

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Deirdre K. Manning, Commissioner